ACCOUNTANCY

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PROFESSIONAL NOTES

Local Authorities as Taxpayers

Readers will have noticed that on August 5 the House of Lords upheld the decision of the Court of Appeal in the South Shields case (*Allchin* (*Inspector of Taxes*) v. *Coulthard*). Local authorities have thus won the final round in this long-drawn-out struggle. Local authorities have always regarded as unfair the attempts of the Inland Revenue to split up their activities, for tax purposes, into watertight compartments. This artificial division had its origin in the fact that the activities of local authorities are governed by numerous statutes, which, *inter alia*, regulate the disposal of profits of trading undertakings. The attitude of the Inland Revenue was particularly prejudicial to those local authorities who had on the one hand large sums of tax deducted from interest paid on loans in respect of non-trading activities, and, on the other hand, substantial taxed profits of trading undertakings. Under Rule 19, local authorities sought to set off the taxed profits of the trading undertakings against tax deducted from non-trading interest payments, just as an individual taxpayer sets off his taxed profits against any mortgage interest he may pay. The Inland Revenue, however, so interpreted the statutes that it was possible to do this only to a limited extent, the climax being reached when the local authorities found that the passing of the Electricity Act, 1926, had in many cases the unintentional effect of increasing their tax liability. To circumvent this position, local authorities inserted in local Acts clauses in substitution for the clauses in the general Acts. The new local clauses preserved the control over finance which the general Acts provided, but at the same time avoided the income tax disabilities. After some hesitation the Inland Revenue decided to contest the validity of these local Act provisions, South Shields being the test case, selected after the most careful consideration by the Inland Revenue and the Institute of Municipal Treasurers and Accountants.

The House of Lords has now decided that these clauses are effective; a long-standing grievance is removed; and local authorities are nearer to the goal at which they aim, *i.e.*, to be treated for tax purposes in the same way as an individual carrying on several businesses. The decision is one of considerable interest from several points of view. The judgments themselves, and particularly the extended references to the Metropolitan Water Board case (*Attorney-General* v. *Metropolitan Water Board*, 1928), will be read with interest by all accountants. The decision is of importance to the ratepayer, for in some areas the amount at stake reaches a figure of several pence in the £. The judgments also illustrate the use of the English system of local legislation, which gives scope for local initiative and experiment. Finally, the decision is a tribute to the enterprise of those gentlemen who devised these ingenious clauses. They achieved their purpose, though only after a protracted and expensive fight in the courts. Readers desirous of studying the case in detail will find the principles involved explained more fully in an article which appeared in this journal in November, 1941, page 25.

Company Law Amendment

In our last issue we recorded the names of the members of the Company Law Amendment Committee appointed by the Board of Trade, and the main headings under which the Committee is inviting suggestions. Certain of these headings have now been amplified as shown below :—

1. *Restrictions on use of names.*

2. *Shares of no par value.*

3. *Prospectuses and offers for sale :* (*a*) Contents of and authentication of information in : (i) prospectuses, (ii) offers for sale, (iii) statements in lieu of prospectuses, (iv) Stock Exchange requirements. (*b*) Underwriting. (*c*) Minimum subscription.

4. *Private Companies :* (*a*) Restrictions and requirements on formation. (*b*) Issue of share capital and loan capital. (*c*) Restrictions on transfer of shares. (*d*) Disclosure of accounts.

5. *Debentures :* (*a*) Power to create and issue debentures. (*b*) Powers, duties and position of (i) Trustees, (ii) Receivers.

6. *Register of members and debenture-holders : shares and debentures held by nominees.*

7. *Financial relations between Companies (including subsidiary companies) and directors and former directors :* (*a*) Share dealings. (*b*) Remuneration and other emoluments or advantages. (*c*) Voting on matters in which they are interested.

8. *Accounts :* (*a*) Form and contents of balance sheets and profit and loss accounts. (*b*) Circulation and inspection.

9. *Appointment and functions of Auditors.*

10. *Relations of Holding and Subsidiary Companies :* (*a*) Definition of subsidiary company. (*b*) Disclosure of information as to subsidiary companies. (*c*) Consolidated accounts.

11. *Shareholders' Control :* (*a*) Meetings and voting. (*b*) Rights and protection of classes and minorities.

12. *Liability of Companies for acts of their officers with particular reference to certification of transfers.*

13. *Reconstruction and amalgamation.*

14. *Winding up :* (*a*) Declaration of solvency. (*b*) Fraudulent preference. (*c*) Avoidance of debentures.

15. *Investigation of affairs of Companies.*

16. *Miscellaneous.*

Tax on Current Earnings

Suggestions are current that the Chancellor may introduce a supplementary budget in September with the object of placing tax deductions from wage-earners' incomes on a current basis to begin next February. If the taxpayer is to be left in approximately the same position as at present, this will, of course, involve some such arrangements for the Treasury to "forgive" a year's tax as have been adopted in the United States. Our readers will find an explanation of the American system in two special articles, the first of which appears on page 228 of this issue. A purely mechanical difficulty has been pointed out in a letter to the press by Mr. T. Haworth, F.S.A.A., Chief Accountant of the Port of London Authority, who has calculated that on a pay-roll covering about 12,000 men, the calculation of current deductions would mean an additional weekly effort of at least 100 man-hours.

New Solicitors' Accounts Rules

The Council of the Law Society is required by Section 18 of the Solicitors Act, 1941, to make Rules requiring a solicitor-trustee to keep separate bank accounts for trust moneys, and to keep accounts containing particulars of moneys received, held or paid on account of a trust. The term "solicitor-trustee" is defined as "a solicitor who is a sole trustee or who is co-trustee only with a partner, clerk or servant of his or with one or more of such persons." The proposed Rules in draft form appeared in the *Law Society's Gazette* for July, 1943, together with draft Solicitors' Accounts Rules to supersede those now in force. These embody some amendments consequential on the making of the Solicitors' Trust Accounts Rules, and the opportunity has also been taken of making certain amendments to deal with points of difficulty which have arisen in practice on the existing Solicitors' Accounts Rules. This is regarded as particularly important in view of the provision contained in Section 1 of the Solicitors Act, 1941—which will not be operative until after the war—that every solicitor will be required to deliver annually to the Society an accountant's certificate of compliance with the Solicitors' Accounts Rules. The nature and extent of the examination to be made by the accountant for this purpose will be prescribed in further rules to be made by the Council of the Law Society in due course. The revised Solicitors' Accounts Rules and Solicitors' Trust Accounts Rules will not be made before September 15, 1943, at the earliest.

The Future of Local Government

An important problem of post-war organisation is raised in a memorandum issued jointly by the Association of Municipal Corporations and the County Councils Association. Concern is expressed at the drastic changes made and sought to be made by the Government in the local government service, and at the methods by which it is proposed that such changes should be brought about. As examples of the encroachments upon the local government field already announced or understood to be contemplated, it is pointed out that the veterinary service and the fire service have already gone to Whitehall ; that the Government has declared for a policy of transferring from the local authorities to the Ministry of Agriculture all functions related to milk production ; and that the county authorities have been sounded unofficially as to their possible reactions if Class I roads should follow in the wake of the trunk roads.

It is obvious that we are in a transition phase. The problem is to improve the efficiency of local government by widening the areas for the administration of certain services (or in extreme cases transferring functions to the central Government), without impairing the usefulness of the existing system, which among other things is acknowledged to be extremely valuable as a training ground in democratic government. The present position, in which the system is being attacked piecemeal without any co-ordinated approach to the problem by different Government departments, is obviously unsatisfactory.

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A NEW CHAPTER IN EDUCATION

The public feeling about educational reform was cogently represented in the statement of the Rt. Hon. R. A. Butler, M.P., President of the Board of Education, in the recent debate on the White Paper on Educational Reconstruction. Since 1870 there has been only one chapter of statutory reform, the Act of 1902, whose merits were unhappily obscured by religious controversy. The Fisher Act of 1918 was a "dead letter," but substantial improvements have, during the years between the wars, been effected by administration. In spite of deplorable shortcomings in the educational system in certain directions, it is well to recognise how much has been good in the past. This ought to be preserved and strengthened and not lost in too much uniformity or submerged in a State system.

The present Government programme has been set forth in the White Paper, supplemented by the Norwood Report on Curriculum and Examinations in Secondary Schools. Reports are still awaited from the McNair Committee on the supply and training of teachers, and from the Fleming Committee on the residential, that is mainly the public, schools. The White Paper and the Norwood Report are admirable documents, and the reader must beware lest his critical faculties may be dulled by the very lucidity and interest of their recommendations. The informed statement of the President of the Board of Education, marked by conviction and imagination, was acclaimed in all quarters of the House. The Minister and his advisers are to be commended for the able preparation of a comprehensive programme. It is to be hoped that it will avoid the dangers of a too-stereotyped system, but that it will foster the individual spirit, alike in administration, in the school, in the teacher, and in the pupil. Mr. Butler himself is onscious of the danger of rigid uniformity.

The main proposals are to raise the minimum school-leaving age to 15 immediately, and eventually to 16; that secondary education from 11 onwards shall be universal; that there shall be a transition period (the lower school period) at one of three types of secondary school from 11 to 13, when abilities and aptitudes will be assessed, in order to determine whether a boy or girl shall continue secondary education at a Grammar, or a Technical, or a Modern school. In the grammar and technical schools it will be possible for pupils to remain at school until 18 plus, while those who leave school earlier will be required to take a part-time course at a "Young People's College."

The grammar schools will mainly be concerned with the humanities, mathematics and some science. Courses at technical schools will comprise a general education, but with a definite scientific and technical bias, while courses at modern schools will be general, with possibly some slight vocational emphasis. All this implies a reduction in the size of classes, considerable reorganisation in administration, an increase in the number of teachers, and the provision of adequate buildings.

Mr. Butler paid a well-deserved tribute to the tradition of the English grammar schools—a very comprehensive category. Founded in many cases by public-spirited benefactors, some of them have maintained their complete independence, others have become direct grant schools, or receive grants through the local authorities to supplement their own endowments. Though this is a matter with which the Fleming Report may deal, we should have thought that the individuality of the grammar schools would be better maintained if more of them became direct-grant schools.

The official documents make it clear that the professions will mainly look to the grammar schools for their recruits, and we entirely agree with this proposal. The Norwood Committee recommend that after a transitional period the School Certificate Examination now taken at about 16 years of age shall be abolished, and that the assessment of a pupil shall be on the basis of a school record and his performance at internal examinations. It was objected that the School Certificate Examination had too great an influence upon the content and method of education in secondary schools and that the pupil was made to fit the curriculum, whereas the curriculum ought to fit the pupil. There will, however, be a school-leaving examination for pupils who remain at school until 18. The objection that a number of pupils are now given a grammar-school type of education, leading to the professions and the Universities, which is not suitable for them, is undoubtedly valid. But we view with considerable doubt the proposal to abolish the School Certificate. We believe that employers and the professions have found—by experience and not by assumption—that holders of school certificates of matriculation standard usually exhibit that degree of intelligence and general training which is essential in professional and business life. We think, however, that in the future the accountancy profession will mainly recruit its candidates from those who have taken the proposed school-leaving certificate at 18 years of age.

It is gratifying to find that the Norwood Committee have devoted much attention to the question of English, as widespread information was received that pupils were deficient in capacity for clear expression in writing and in speech. Steps will undoubtedly be taken to provide a remedy.

Parliament was insistent that in the list of post-war priorities education should have the first place, and there was little disposition to introduce increased cost as a possible brake or objection to giving practical effect to the commendable programme proposed.

The Future of Accountancy Technique

Contributed through the Incorporated Accountants' Research Committee

I—UNSOLVED PROBLEMS

By BERTRAM NELSON, Incorporated Accountant

In a changing world, accountancy methods have had to develop so rapidly in recent years that technical advances have often side-stepped basic questions of principle. Three illustrations may be given :—

1.—Accounts are increasingly used not merely as historical records but as guides to future action ; yet the information given in most accounts is quite inadequate as a basis of action. A decision to invest in a business because profits are steadily rising may, for example, be wrong if the increased profits are due solely to changing price levels, inadequate expenditure on repairs or the premature realisation of appreciating stocks. Internal analysis as a method of judging efficiency has scarcely yet been explored. Moreover, the technique and machinery of comparison between one business and another still await development. Industry is increasingly willing to make these comparisons but the accountancy profession has still to make up its mind about basic principles.

2.—Accounts are becoming more informative and intelligible ; it is increasingly recognised that not only the management but everyone concerned in a business is entitled to know what is going on. Thus accounts are, for example, carefully designed so as to show the true profit of the financial period under review. Unhappily, however, many of the principles on which those profits are calculated are still in doubt. At what point should a profit be taken on a hire-purchase sale ? If stock values appreciate, is the resultant profit earned in the period in which the appreciation takes place ? If there are capital losses, when should they be charged against profits ? How can the true profits of a holding company be computed and expressed ? Until these and many other principles are settled, changes in the design of the profit and loss account may look good but they cannot show the true profit.

3.—The functions of the balance sheet (historically no more than a method of " proving " the books) are also changing. The balance sheet, for better or worse, has become a statement of assets and liabilities on which the soundness of a business is judged. Is this development to continue, so that the balance sheet is based on current valuations rather than on historic costs ? What is to be done when monetary values change ? Is depreciation to be regarded as a method of (*a*) keeping an asset at its going-concern value or (*b*) spreading the original cost evenly over the estimated life of the asset or (*c*) providing a cash reserve for replacements or (*d*) obtaining comparable operating costs ? Is the apparent conflict between " the true profit for the period " concept and the " valuation balance sheet " to be solved by a third fundamental final account, in which will be shown fluctuations in values not directly related to trading operations ?

Our familiar accounting technique can be used for new purposes—in business management, in price control, in the formation of economic policy, and in national finance. But we must do some thinking first—What are the fundamental principles on which we are working ? By what research methods can these principles be explored ? What practical steps should be taken now ?

II—THE BACKGROUND OF ACCOUNTING PRINCIPLES

By F. S. BRAY, Incorporated Accountant

The technique of accountancy takes on something of the nature of an art and something of the nature of a science, and should be set against a study of human institutions in their economic status. Mere technical skill by itself can become something quite mechanical and superficial, lacking in penetration and background, lacking in depth and tradition. " A professional man has one foot in the academic world and the other in the world of affairs ; the academic man knows what is theoretically possible, the professional man knows what is possible in practice, or at least he is in a position to discover what is possible and to make it known. This is his unique province for observation, and it is here that he can contribute to knowledge."*

During the last fifty years professional accountants have been called upon to face up to an increasingly wide range of practical problems which has tended to leave them isolated in the somewhat narrow atmosphere of their day to day duties. This can be seen in the featureless uniformity of much accounting literature. It is this state of affairs which is very largely answerable for the lack of interest in research, and the lack of an adequate body of literature dealing with the theoretical implications lying behind accounting technique. The application of knowledge depends primarily upon sustained academic study and the progress of research, neither of which we can afford to ignore if we are to understand the real principles upon which rests the mechanism of our craft.

Without having thought very much about it we know almost intuitively that accounts must be expressed in monetary terms whatever the motive of their preparation. This is the most fundamental principle of all, but quite clearly it needs both emphasis and explanation in the face of some obscure and quite extraordinary conceptions, current in some

* *The Professions*, by A. M. Carr-Saunders and P. A. Wilson (Oxford, at the Clarendon Press, 1933) ; p. 485.

circles, of the kind of information which so-called accounting documents should portray; whether these monetary terms should be based on actual monetary cost or whether there should be some fixed monetary unit from which all outside variations are removed, is a question for research to pursue. That it is possible to exclude outside monetary variations to judge efficiencies from accounts has been shown by the present German standardised system imposed by the administration in that country.

Mr. Nelson reminds us that the technique and machinery of comparison between one business and another still await development. It is clear that for such a comparison to be effective there must be some measure of uniformity in both principles and design in the construction of accounting documents, e.g., we must be certain of the principles governing the measurement of income and costs as related to the assessment of balance sheet valuations. Again it is for those engaged in research to work out the point at which balance sheet and revenue figures approach their most effective state of equilibrium.

Having once discovered those principles which are fundamental to accounting technique, it is clearly desirable that they shall be consistently comprehended and consistently applied in the construction of accounting documents if we are to guard against a tendency to haphazard development in practice. With such principles made plain we shall then be in the way of determining the place of accountancy in the direction of human institutions in their economic status.

III—THE TECHNIQUE OF RESEARCH

By J. J. ELSDEN, Incorporated Accountant

Truth must inevitably be the ultimate object of all research. The difficulty in attempting to apply research methods to accountancy, and similar problems, arises mainly through the very large number of variable factors involved. Cold analysis and scientific methods, coupled with a great deal of hard work, will in time achieve results, but the research worker must be extremely persistent and single minded. It is unfortunate that so much depends on the point of view of the person compiling an account.

The accounts of a given business prepared by different accountants vary considerably, and similar variations occur between accounts prepared by the same accountant for different purposes. There can only be one true account of any business for a given period, and only one true balance sheet on a given date. If these accounts are true, they will be true for all purposes, and ought to be regarded as absolute. Opinion is divided on this point and few accountants will be able to accept this statement without reserve, but it is an ideal to aim at, and a subject well worth investigating.

Before the research worker can begin he requires a clear and concise statement of the problem. Having obtained this he must then classify the various factors and study the effect of each.

Concerning research applied to Engineering, it has been said that :—" In investigating practical problems it is necessary first to accurately determine and define the various factors which enter into the problem; then to classify these factors according to the degree of their importance, and lastly to study the effect of each of these factors as variables independently." (*Frederick W. Taylor*, by F. B. Copley.)

In studying the effect of each factor, a series of questions which can be answered by a simple " Yes " or " No " should be formulated, and in relation to each factor the following methods should be applied :

(*a*) All known sources of information must be tapped and their reliability tested by comparison one with another.

(*b*) A series of experiments must be conducted, based on the information obtained under (*a*), and the results carefully tabulated.

(*c*) If the experiments conducted as under (*b*) are sufficiently representative, conclusions can be drawn from these.

Space does not permit a demonstration of these methods as applied to accountancy problems. They are admittedly difficult to apply to the subject under review because it is not always possible to tap known sources of information. This depends on the willingness of third parties. Similarly, experiments cannot be conducted in the laboratory, but only on live subjects who may not be willing to submit to experiment. For this reason, if for no other, it is important that accountants employed in industry, particularly those who have the opportunity to state accounts according to their own choice, should assist in research work of this nature.

The diverse viewpoints of professional and industrial accountants are worthy of study, but when the investing public and the Inland Revenue are also brought into comparison, the study is an absorbing one. Co-operation between representatives of these varied points of view, all seeking a fair and true method of stating accounts, might eventually lead to a true statement acceptable by all parties for all purposes.

IV—PRACTICAL STEPS

By E. C. BURRELL, Incorporated Accountant

Before the unsolved problems of which Mr. Nelson has given examples can be resolved an essential prerequisite is to establish machinery which is capable of dealing adequately with the problems. This machinery must undoubtedly take the form of Committees, and it is clear that the personnel of such Committees should not only have a clear conception of their individual responsibilities but after full investigation of all matters incidental to the various problems under review they should be courageous in decision and not fear the expression of new or unorthodox ideas. Furthermore the Committees should

be as authoritative as possible as there would then be more likelihood of their recommendations being acted upon.

It is suggested that the problems awaiting research can be broadly classified under three main headings:

(*a*) The development of entirely new conceptions of accounting technique.

(*b*) The consideration of various aspects of accounting procedures such as the design of accounts and balance sheets, depreciation treatment, etc., with the object of obtaining widespread application of recommendations made.

(*c*) The consideration of ways and means whereby accounting technique can contribute to the solution of economic problems. For instance the preparation of accounting documents by reference to prescribed standards would, subject to the standards being satisfactory and also to the documents being available to suitable organisations for collation, contribute enormously to the statistical information available to the Government and would facilitate the taking of remedial measures to mitigate trade depressions and ancillary evils.

The problems coming within (*a*) and (*b*) and some of those coming within (*c*) could be dealt with most satisfactorily by a Master Committee comprising members of all the main accountancy societies. Nominations to this Committee could be made in the first instance by the various Councils, but subsequently nominations could be made at the annual general meetings of the various societies. This Committee would be empowered to engage full-time research personnel. Furthermore the Committee would decide upon the subjects for research which would be carried out in detail by (*a*) the full-time personnel and (*b*) Research Committees appointed by the individual societies, which would have power to invite reports from District Societies and from individual members. Full reports of the research carried out would be made to the Master Committee, which would discuss and consider these reports and then proceed to prepare its own report and recommendations upon the particular subject or matters under review. Having regard to its status the reports of the Master Committee should have the desired effect provided that the recommendations are cogently presented after careful preparation. Furthermore the establishment of such a committee would go a long way towards overcoming criticism of the profession for not putting its own house in order.

Consideration of matters coming within (*c*) could also be carried out by the same machinery; but some subjects, such as the establishment of uniform systems of financial and costing accounting for particular trades and industries, could, after preliminary research, be dealt with most effectively by joint Committees comprising members of the profession and members of the Trade Associations representing the trades or industries concerned. These Committees would be charged with the preparation of detailed recommendations with a view to approval thereof by the Master Committee and the Trade Associations.

It is suggested that the foregoing suggestions could be carried into effect immediately upon the initiative of the Institute, the Society and the Association, and much valuable work could be carried out with little delay provided that only that is attempted which is reasonably achievable having regard to the present difficult time factor. With the goodwill and enthusiasm of many a great contribution could be made by the profession in framing proposals which if adopted would help towards the economic well-being of the country and would also enhance the prestige of the profession.

Taxation of Wages in Wartime America*

By MARY E. MURPHY, Ph.D., (Lond.), C.P.A.

I—THE VICTORY TAX

In an effort to control inflation and to strengthen the war economy, the American Government, starting with January 1, 1943, imposed a new 5 per cent. Victory tax on all forms of taxable income in excess of $624, except for capital gains and losses and interest on U.S. Government obligations issued prior to March 1, 1941. This tax introduced the withholding feature, withholding being limited under its provisions only to salaries, wages and other forms of compensation for personal services, but there is no discrimination in favour of other income.

For example, if a taxpayer, A., receives a $5,000 salary during 1943, his employer will withhold during the year and at proper times remit to the Government $218.80. In 1944 the taxpayer will file his income and Victory tax return. Victory tax on $5,000 less the exemption of $624 amounts to $218.80. The tax withheld will be credited against his Victory tax with his remaining Victory tax liability becoming zero. On the other hand, if another taxpayer, B., received $5,000 interest on corporate bonds during 1943, his Victory tax will be $218.80, but as nothing will be prepaid through withholding, he will be required to pay the entire tax when his return is filed, or he may elect to pay in the usual quarterly instalments.

All employers, whether engaged in business for profit or not, must withhold. Clubs, social, religious, educational, and charitable organisations, and State and local governments are subject to this tax. Certain employees, however, are exempt, including

* In view of the widespread interest in this country in possible schemes for the deduction of tax from wages on a "pay as you go" basis, we have pleasure in presenting an article on the system adopted in the United States of America. The article has been specially written for ACCOUNTANCY by Miss Mary E. Murphy, of New York, who has contributed to our columns on previous occasions. In this month's instalment Miss Murphy explains the incidence and the method of deduction of the Victory tax; the concluding section, to be published in our next issue, deals with the subject of income tax.

members of the military or naval forces of the U.S. other than those on pension or retired pay; those engaged in agricultural labour; domestic servants in a private home or in a college club; employees performing casual labour not in the course of their employer's trade or business; employees of a non-resident alien individual, foreign partnership or foreign corporation if not engaged in a trade or business in the U.S.; employees of a foreign Government or a wholly-owned instrumentality thereof; all those who perform services outside the U.S. for a major part of the year. For instance, if Harvey Lake employs a secretary in his office and a maid in his home, paying each more than $624 annually, he withholds from the former's salary, but not from the latter's. Both the secretary and the servant, however, must file a Victory tax return, the former's tax being paid according to the illustration concerning A. previously given, the latter according to B.

Questions have arisen whether an individual is an employee or an independent contractor. In the case of the last-named, no withholding is required. Generally speaking, if the taxpayer has control over the result to be accomplished, and the method and means of accomplishing this result, the individual is considered an employee. The Government has stated that doctors, lawyers, dentists, veterinarians, public stenographers, auctioneers and contractors will be considered to be independent contractors. No distinction is made in the law, however, between classes and grades of employees, but directors of companies are not considered as employees.

Computation of Tax to be Deducted

The withholding deduction is calculated on the total compensation paid for services whether in the form of wages, salaries, commissions or bonuses, including the value of remuneration paid in any other medium than cash. Living quarters and board, therefore, are considered to constitute additional compensation. The tax has been set at 5 per cent. of the amount of remuneration exceeding $12 if the pay-roll period is weekly; $24 if bi-weekly; $26 if semi-monthly; $52 if monthly; $156 if quarterly; $312 if semi-annually; $624 if annually.

A table showing the withholding for a weekly, semi-monthly, and monthly pay-roll period follows:

For Weekly Pay-roll Period

If the wages are over	But not over	The amount of tax to be withheld shall be
$12	$16	$0.10
16	20	.30
20	24	.50
24	28	.70
28	32	.90
32	36	1.10
36	40	1.30
40	50	1.60
50	60	2.10
60	70	2.60
70	80	3.10
80	90	3.60
90	100	4.10
100	110	4.60
110	120	5.10
120	130	5.60
130	140	6.10
140	150	6.60
150	160	7.10
160	170	7.60
170	180	8.10
180	190	8.60
190	200	9.10
200	...	$9.40 plus 5% of the excess over $200

For Semi-monthly Pay-Roll Period

If the wages are over	But not over	The amount of tax to be withheld shall be
$26	$30	$0.10
30	40	.40
40	50	.90
50	60	1.40
60	70	1.90
70	80	2.40
80	100	3.20
100	120	4.20
120	140	5.20
140	160	6.20
160	180	7.20
180	200	8.20
200	220	9.20
220	240	10.20
240	260	11.20
260	280	12.20
280	300	13.20
300	320	14.20
320	340	15.20
340	360	16.20
360	380	17.20
380	400	18.20
400	420	19.20
420	440	20.20
440	460	21.20
460	480	22.20
480	500	23.20
500	...	$23.70 plus 5% of the excess over $500

For Monthly Pay-roll Period

If the wages are over	But not over	The amount of tax to be withheld shall be
$52	$60	$0.20
60	80	.90
80	100	1.90
100	120	2.90
120	140	3.90
140	160	4.90
160	200	6.40
200	240	8.40
240	280	10.40
280	320	12.40
320	360	14.40
360	400	16.40
400	440	18.40
440	480	20.40
480	520	22.40
520	560	24.40
560	600	26.40
600	640	28.40
640	680	30.40
680	720	32.40
720	760	34.40
760	800	36.40
800	840	38.40
840	880	40.40
880	920	42.40
920	960	44.40
960	1,000	46.40
1,000	...	$47.40 plus 5% of the excess over $1,000

If an employee is paid for a period less than a week, withholding is eliminated until his remuneration for the week exceeds $12. Therefore, if Wilson received $5 daily, nothing would be withheld for the first two days of the week, but for the third day, withholding would be 15 cents (5 per cent. of $15—$12); for the fourth and succeeding days of the week withholding is 25 cents (5 per cent. of $5). If the pay-roll period is greater than a week, and is not covered by the above schedule, withholding is 5 per cent. of the amount by which remuneration exceeds $1.71 multiplied by the total number of calendar days in the period. For instance, if Ryan is paid $30.50 for 10 days' work, withholding is 67 cents (5 per cent. of $30.50—$17.10). Withholding does not vary according to the personal status of the employee, as the same amount is withheld from a married and a single man receiving the same compensation.

For a weekly, bi-weekly, semi-monthly, or monthly pay-roll period, the employer, instead of making an exact computation, may withhold specified amounts roughly corresponding to the 5 per cent. in accordance with tables set forth in the law. This method may result in a slight over or under-payment of the tax, which will be adjusted with the employee when his return is filed. The total of the exclusions of one employee from withholding from compensation cannot exceed $624 for the calendar year, but any unused exclusion from any pay-roll period may not be carried forward.

If commissions alone are received by an employee

at irregular intervals, the computation of tax is the same as that for Ryan in the previous illustration. If a salary plus commissions or bonuses are received in each pay-roll period, the total amounts to a single wage payment, and the computation is made by deducting the exclusion applicable for that period. If Fox received, for example, a $100 drawing account plus a varying amount of commissions monthly, the exclusion is $52, the amount to be withheld being 5 per cent. of the excess. If employees receive periodic wages and a bonus at irregular intervals, the withholding from each is calculated separately. If, for example, Levy on July 1 receives a bonus for the preceding six months, the excess over $312 (the exclusion for a semi-annual wage payment) is subject to withholding. If $312 had already been excluded from his regular wages, no further exclusions would be allowable against either wages or further bonuses for the balance of the year, as he had received the maximum yearly exemption.

Statements Required from Employers

Employers must furnish each of their employees from whom tax has been withheld with a written statement showing the period covered, wages paid during the period, and amount of tax withheld. The receipt must be furnished to the employee on or before January 31 of the succeeding year for which the tax was withheld. If an employee leaves before the close of the calendar year, a receipt must be supplied on the day on which the last payment of wages was made. The Tax Commission may grant an employer an extension not exceeding 30 days relative to receipts in cases in which an employee leaves before the close of the calendar year.

The Treasury will furnish forms to employers for the Victory tax, but will accept forms prepared by them if they are substantially in agreement. The Treasury's form follows, and, when completed, is to be filed with the Collector of Internal Revenue:

FORM V-2
U.S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

STATEMENT OF VICTORY TAX WITHHELD
By Employer
(EMPLOYEE'S RECEIPT)

Calendar Year 1943

INSTRUCTIONS TO EMPLOYER

Prepare this form in duplicate for each employee from whom Victory Tax has been withheld. Furnish original to employee. (See Instructions for Return of Victory Tax Withheld, Form V-1.) Forward duplicate with Return of Victory Tax Withheld, Form V-1, for the fourth quarter of the year (or with the employer's final return, if filed at an earlier date).

INSTRUCTIONS TO EMPLOYEE

This is your receipt for Victory Tax withheld. You should keep it for use in preparing your income and Victory Tax return for 1943, and as evidence of tax withheld.

EMPLOYEE TO WHOM PAID

(Print full name of employee, home address, and social security number, if any. If employee is a married woman, name of husband should also be furnished.)

EMPLOYER BY WHOM PAID

(Name and address of employer)

STATEMENT OF VICTORY TAX WITHHELD

Wages and other remuneration paid during the calendar year 1943, or, if for less than the full calendar year, from.....to..... $.....

Amount of tax withheld..... $.....

Employers will use this blank to inform employees of the amount withheld

FORM V-1
U.S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

UNITED STATES
RETURN OF VICTORY TAX WITHHELD

(See Instructions)

For Quarter Ended....., 194.....

I swear (or affirm) that I have examined this return, that it is made in good faith, and that to the best of my knowledge and belief all entries made herein, and contained in each schedule or statement attached and made a part hereof, are true, correct, and complete, and in accordance with the law and regulations applicable hereto.

(Signed) .....

(Title) .....
(Owner, president, partner, member, etc.) (See Instructions.)

Subscribed and sworn to before me this.....day of....., 194.....

.....
(Signature and title of officer administering oath)

(Type or print in above space employer's name and address of principal place of business)

1. Total amount of Victory Tax withheld from wages and other remuneration during quarter $.....
2. Adjustment for discrepancies in prior returns (Explain in statement attached) $.....
3. Total Victory Tax withheld..... $.....
(If paid by check or money order, make payable to Collector of Internal Revenue)

SPACE BELOW FOR USE OF COLLECTOR

4. Penalty ..... $.....
5. Interest .....
6. Total..... $.....

CASHIER'S STAMP

Date Quarter Ended:

Master List No.:

Only one statement a year is to be furnished on or before January 31 following the close of the year. If an employee leaves employment before the end of the year, the statement must be given simultaneously with the last wage payment.

The employer makes a return of the tax withheld and pays the Government on the last day of the month following each calendar quarter. If the tax withheld or paid for any quarter is incorrect, an adjustment may be made in any subsequent quarterly return, without interest; with the last quarterly return a duplicate of each employee's receipt must be furnished. The first return form V-1 was due on April 30, 1943. With the return for the fourth quarter due January 31, 1944, the employer will also file form V-3, and duplicates of all statements to employees, V-2, relating to the preceding year. Form V-3 reconciles the four V-1's with the several V-2's. No information return Form 1099, formerly required of employers paying wages or salaries, will be required if the Victory tax has been withheld. Any withholding agent who wilfully furnishes a false or fraudulent receipt, or who wilfully fails to furnish a receipt to the employee shall be subject to a fine of $1,000 or imprisonment for one year, or both. In addition, the withholding agent is subject to a civil penalty of $50 for each such failure. Unless it is shown that such a failure is due to reasonable cause, and not to wilful neglect, the withholding agent is subject to a penalty of not less than $5, and 5 per cent. additional to the tax if the delay is not more than 30 days, with an additional 5 per cent. for each additional 30 days or portion thereof, not to exceed 25 per cent. in the aggregate.

Post-War Credits

After the war, tax-payers are allowed a post-war credit or refund of the Victory tax paid each taxable year equal to the following percentages: In the case of a single person, 25 per cent. of the Victory tax, or $500, whichever is the smaller; in the case of head of family, 40 per cent. of tax or $1,000, whichever smaller; in case of a married person living with husband or wife, where separate returns are filed by each spouse, 40 per cent. of the tax or $500, whichever smaller; in case of a married person where separate return is filed by one spouse and no return by the other, 40 per cent. of the tax or $1,000, whichever smaller; in case of husband and wife filing a joint return, 40 per cent. of the aggregate Victory tax or $1,000, whichever is smaller. For each dependent, 2 per cent. of the Victory tax or $100, whichever is smaller, is permitted. If, during any taxable year, the status of the taxpayer changes relative to personal exemptions or credits for dependents, the amount of the credit or refund is apportioned according to the number of months in each status, more than half a month being considered as a month. The amount of the credit or refund may be used to offset any income tax or instalment payment, and the balance, if any, will be refunded. To secure a credit or refund, the taxpayer must file a claim for credit or refund within seven years from the date of cessation of hostilities, and no interest will be allowed on the credit or refund.

The taxpayer may claim a credit against the Victory tax each year in lieu of the post-war credit or refund consisting of the following items: (1) premiums on life insurance policies if the policy was in force on September 1, 1942, upon his own life, upon the life of his spouse, and the life of any dependent, and the amount paid as premiums on life insurance which is a renewal or conversion of policies in force on September 1, 1942, to the extent that such premiums do not exceed those in force on that date; (2) amounts paid on indebtedness with the credit, the amount by which the smallest amount of the indebtedness outstanding at any time during the period beginning September 1, 1942, and ending with the close of the preceding taxable year exceeds the amount of the indebtedness at the close of the taxable year; (3) obligations of the U.S., with the amount of the credit by which the amount of obligations of the U.S. owned solely by the taxpayer plus one-half of the amount owned jointly on the last day of the taxable year exceeds the greater of (*a*) the amount of such obligations owned on December 31, 1942; (*b*) the highest amount owned on the last day of any preceding year ending December 31, 1942. The amount of the U.S. obligations which the taxpayer received by gift, inheritance, or otherwise than by purchase may not be included as part of the credit. The amount of the credit for each taxable year is limited to the post-war credit or refund.

For instance, a taxpayer, married with no dependents, had a Victory tax of $538.80 for 1943. After the war he could claim a credit or refund of 40 per cent. of the tax or $1,000, whichever is smaller. In this case the credit or refund would total $215.52, or 40 per cent. of $538.80. If he paid life insurance premiums on his own life amounting to $150, and on his wife's life of $50; reduced during the taxable year the mortgage on his residence by $100; and on December 31, 1943, owned in his own name U.S. War Bonds for which he had paid $187.50, the calculation of his balance refundable would be as follows:

Victory tax		$538.80
Post-war credit or refund		215.52
Credit claimed in advance:		
Premium on life insurance policy ...	$200.00	
Payment of debt ...	100.00	
Purchase of bonds	187.50	
		487.50
Balance, if any, refundable after war		None

(To be concluded.)

BOOKS RECEIVED

Free-of-Tax Annuities: Why and how they are taxed. By N. Instone Brewer, Barrister-at-Law. (Gee & Co. (Publishers), Ltd., London. Price 2s. net.)

Farm Book-Keeping. Compiled by the Ministry of Agriculture and Fisheries. (H.M. Stationery Office, London. Price 3d. net.)

(This was reviewed in our August issue, where the price was incorrectly stated to be 6d.)

Statutory Disqualification of Auditors—II

[CONTRIBUTED]

In the first section of this article, published in the August issue of ACCOUNTANCY, it has been pointed out that Section 133 (1) of the Companies Act, 1929, by its paragraph (*a*), disqualifies for appointment as an auditor of a company a director or officer of the company, and, by paragraph (*b*) imposes the like disqualification, except where the company is a private company, on a person who is a partner of or in the employment of an officer of the company; and the question who is an " officer " of the company has to some extent been discussed. In this latter connection a somewhat peculiar question arises. The sub-section disqualifies a director or officer for appointment as an auditor but, in imposing a like disqualification on a partner or employee of an officer, it makes no mention of a partner or employee of a director. It is thus open to argument that the sub-section itself draws a distinction between a " director " and an " officer," and does not disqualify a partner or employee of a director. It is to be noted, however, that the expression " any director, manager, secretary *or other officer* of the company," occurs with some frequency in the Companies Act, 1929, and this is somewhat strong to show that, unless in the particular context some definite reason to the contrary can be found, the expression " officer," where not used in immediate connection with the word " director," will of its own force include a director. If, in Sub-section 133 (1) (b), the expression " officer " does not include a director, a considerable gap in the effect of the section in achieving its plain policy is disclosed. It is thought that there is no substance in the distinction suggested and that the sub-section plainly disqualifies a partner or employee of a director for appointment as an auditor of the company, in cases where that disqualification extends to a partner or employee of an officer.

The Application of the Sub-section

In general, the application of Sub-section 133 (1) of the Act occasions no difficulty, once the problem of deciding who are officers of the company is solved, if that problem arises and admits of any doubt. As regards paragraph (a) of the sub-section, nothing need here be said. Nor need paragraph (b) of the sub-section in general occasion much difficulty, once the particular problem last mentioned is out of the way, if it is capable of fairly arising.

In connection with paragraph (b) of the sub-section, the preliminary point should be noted that this paragraph has no application to a private company.

Another point on the sub-section arises in this way, and, incidentally, this applies to both paragraphs (a) and (b). It may happen that a person is appointed an auditor, and thereafter, during his tenure of office, he or a partner of his, or his employer, is appointed to be a director, or the secretary, or an officer of another kind of the company. It is considered that this circumstance does not disqualify the auditor from continuing to act as auditor for the remainder of his tenure of office. The introductory words of the sub-section are : " None of the following persons shall be qualified for appointment as auditor of the company," and it then proceeds to indicate the persons who are not so to be qualified. This seems to show that the time for ascertaining whether a person is subject to one or other of the disqualifications mentioned is the time at which he is actually appointed " to hold office until the next annual general meeting " (see Sub-section 132 (1)). The sub-section does not say in terms that " none of the following persons shall be qualified to hold office, or to act, as auditor of a company . . .," or use any equivalent language, and its omission to do so is thought to be significant. It is true that this view of the matter does not give the maximum effect to what is thought to be the policy of the section, but it is obviously supported by reasons of convenience.

Again, it is to be noted that there is nothing in the sub-section to disqualify for appointment as an auditor a person who is himself the employer of another person who is a director or other officer of the company, and no particular reason of policy suggests itself why a disqualification should exist in such a case.

If, then, one member of a firm of accountants should for the time being be a director, secretary or other officer of a company, and the firm, or one or more of the other members of it, should be appointed auditors of the company, that appointment would be in plain violation of the sub-section and a nullity accordingly, unless the situation is saved by the company being a private company.

On the other hand, it is thought to be reasonably clear that, where the firm, or a member or members of it, are appointed as auditors at a time when no disqualification exists under the section, the appointment thereafter, before the next annual general meeting, of a member of the firm to be a director or other officer of the company would not operate to disqualify the auditors, or even the member appointed to be a director or officer, from continuing to hold office, or effectually performing the duties of the auditors, until that next annual meeting. It may well be that, in such a case, the auditors might think it proper to resign their office as auditors, but it is conceived that, in the circumstances supposed, there is no legal requirement that they should do so, and no automatic statutory disqualification operative during the remainder of the period for which they were initially, and duly, appointed.

And if, during the tenure of office of auditors duly appointed, an employee of theirs, without vacating his employment by them, should be appointed a director or other officer of the company concerned, it seems clear that no disqualification of the auditors by reason of that fact can be said to arise. Nor would it seem to appear that any conception of professional propriety need suggest to

the auditors in such a case the desirability of their resignation of their office.

Private Companies

It has already been noted that paragraph (*b*) of the sub-section does not apply to a private company, so that, although no director or officer of a private company can be appointed an auditor of it, there is nothing in the sub-section, nor is there anything elsewhere in the Act, to preclude the appointment, as an auditor of the company, of a partner or employee of a director or other officer of a private company. There may, perhaps, though doubtfully, be some element of partial justification for this where the private company in question is a small concern, and all or practically all of its shares are held by the directors and their families; though, even here, the exclusion of a director or officer from the office of an auditor of the company, while his partner or employee is eligible for that office, does not seem to be grounded on any discernible principle of logic or expediency.

But, however that may be, it is exceedingly difficult to discover any sound reason why the statute should permit the appointment, as an auditor of a private company, of a partner or employee of a director or other officer, in a case where, though the company is technically a private company, it may have as many as fifty members, exclusive of employees or ex-employees, and a great number of members of the latter class, and may carry on business on a vastly greater scale than many public companies. But the legislature has so enacted, and the position must be accepted until, if ever, the law is altered in this regard.

The result is that, whatever may be the magnitude of the company's operations, if it is a private company, no director or officer may be appointed as an auditor, but there is nothing to prevent a director's or officer's partner or employee, who may be the merest creature of the director or officer concerned, from being so appointed. So far as concerns private companies, the element of protection to the members afforded by the independence, on the part of the auditors, of the regular management of the company, need have no existence at all.

(*Concluded.*)

TAXATION

Channel Islands Investment Companies and United Kingdom Income Tax

By J. E. TALBOT, A.C.A.

The numerous Channel Islands investment companies which evacuated their organisations immediately before the enemy occupation in July, 1940, found themselves in an invidious position under the Trading with the Enemy Act, 1939, until they could satisfy the Board of Trade as to their *bona fides*; and it was not until August, 1941, that their position was formally regularised by the making of emergency regulations (S.R. & O., 1941, numbers 1210 and 1229), under which approved companies became entitled to be registered under the Companies Act, 1929, and thereafter to be treated for all purposes (with specified exceptions) as if they were incorporated thereunder.

In the same month, i.e., August, 1941, the Inland Revenue stated their official attitude as regards the liability to income tax of Channel Islands investment companies which had satisfied the Board of Trade as to their freedom from enemy status and had become resident in the United Kingdom. It is well to note the distinction between registration and residence. Registration alone (which might apply to a company which had re-established its business in an allied or neutral country) is specifically provided not to affect any liability of the company or any other person to income tax, E.P.T. or N.D.C. (*vide* paragraph 4 of S.R. & O. 1210). Registration plus residence, however, involves liability to United Kingdom taxation, although not to the full extent imposed by the taxing statutes having regard to the concessional basis announced by the Revenue in August, 1941.

To qualify for this special treatment, a company must prove :—

(*a*) That it is an investment company incorporated in the Channel Islands and resident there until the occupation.

(*b*) That it is outside the scope of any United Kingdom legislation relating to the avoidance of taxation.

(*c*) That its directors are authorised by the Trading with the Enemy Branch to operate its bank account here and/or to deal with such of its assets as they are in a position to control.

Where all the above conditions are satisfied the following treatment is applied to the various classes of income described :—

(i) *Income from investments abroad.* The company is treated as not domiciled in the United Kingdom, and accordingly it is not chargeable to tax on income arising abroad except to the extent to which that income is remitted to this country. Any such remittances are charged to income tax only at the rate in force in the Island concerned immediately before the occupation.

(ii) *Income from certain British Government Securities.* The company is treated as not ordinarily resident in this country (subject to giving an assurance that it is intended to re-transfer its activities and control to the Island as soon as circumstances permit), and accordingly it is granted exemption from tax on income from securities issued subject to the condition in section 46 of the Income Tax Act, 1918, and in section 22 of the Finance (No. 2) Act, 1931 (e.g., War Loans, Defence Bonds, Savings Bonds, etc.).

(iii) *Income from other British investments.* This is charged at the United Kingdom standard rate—just as it was when the company was still operating from the Island.

It will be seen that the recognition of the company as being not domiciled here appears to follow the decision in *Gasque* v. *C.I.R.* (23 T.C. 210). Moreover, the treatment as not ordinarily resident simply conforms to

the facts of the case. The novel feature is the charging of tax at the low Island rate on remittances of income from investments abroad. This is plainly extra-legal and is a particularly valuable concession in many cases.

So far, therefore, the company's income tax liability is limited to the standard rate on British income (excluding section 46 securities) and the Island rate on remittances of colonial and foreign income. This simple and favourable position is, however, complicated by the conditions laid down in regard to any dividends *paid* by the company. The Revenue insist that dividends payable to shareholders resident here must bear tax at the standard rate (subject, of course, to any title to the usual personal allowances); and they require the company to agree to pay over the tax necessary to make up the full standard rate in so far as income taxed at less than that rate is distributed to resident shareholders. For these purposes, however, they regard the total dividend as paid, firstly, out of income charged on the company at the standard rate, and, secondly, out of income charged at the Island rate, and only any remaining excess of the dividend is treated as paid out of the section 46 income. Moreover, they apply their usual practice with respect to individuals normally resident abroad who have become resident here owing to service with the Armed Forces—shareholders falling in this category are treated as non-resident shareholders.

The effect may best be illustrated by a practical example, which assumes a Jersey investment company (which has become resident in this country) to possess the following income in 1942/43 :—

United Kingdom taxed income		(gross)	£2,000
Remitted income from abroad			800
Section 46 income			1,000
			£3,800
The dividend paid amounts to		(gross)	£3,000
of which there is paid to resident shareholders	1,500	(i.e., one-half)	
non-resident shareholders	1,500	(i.e., one-half)	

The company's liability, before adjusting by reference to the dividend paid, will be — £2,000 @ 10/- in the £, i.e., tax		1,000	0 0
800 @ 9d. in the £, i.e., tax		30	0 0
		£1,030	0 0

This liability will be increased by reference to the dividend paid, for which purpose there will be treated as having been paid to resident shareholders		Already charged at	Additional charge at	Amounting to		
One-half of U.K. taxed income (£2,000) i.e.,	£1,000	10/-	—	—		
One-half of remitted foreign income (£800) i.e.,	400	9d.	9/3	185		
Part of section 46 income (£1,000) i.e.,	100	—	10/-	50	235	0 0
In order to make up the total payment to resident shareholders	£1,500					
Gross tax liability					1,265	0 0
Less : Amount already borne by deduction from United Kingdom taxed income					1,000	0 0
Balance chargeable by direct assessment on the company					£265	0 0

Since in this way the company will bear tax at the standard rate on the whole of that part of the dividend which is paid to resident shareholders, it will be entitled to deduct therefrom income tax at the standard rate. Furthermore it will be seen that the part of the dividend which is paid to non-resident shareholders is also covered partly by United Kingdom taxed income. To this extent the company is entitled (but not obliged) to deduct tax from that part of the dividend; if it exercises this right, the Revenue will recognise the deduction, e.g., for the purpose of a repayment claim submitted by a non-resident shareholder.

Various subsidiary points have arisen in applying the Channel Islands concession, and the Revenue have stated that they are prepared to deal with them as follows :—

Management Expenses Relief is allowable on the footing that the admissible management expenses were paid rateably out of the three classes of income, viz., liable at standard rate, liable at Island rate and not liable.

Dominion Income Tax Relief is not precluded, but none will be allowed in respect of Dominion income liable only at the Island rate. Any Dominion income tax relief given in respect of income otherwise liable at the standard rate would, of course, have to be passed on *pro tanto* to shareholders by reduction of the rate of tax deducted from dividends paid.

Dividends paid. The due date of payment fixes the fiscal year out of the income of which the dividend must be deemed to be paid. For instance where a company declared a dividend in May, 1943, out of its income for the year to March 31, 1943, that dividend would have to be considered in computing the tax liability for the fiscal year 1943/44, and not 1942/43.

Chancellor's Concession. This is applicable to compulsory remittances of income from abroad by an Island investment company, just as in cases of other taxpayers, and the usual conditions apply as to retaining the remittances in a specified bank account or in identified investments. It will be seen that since the income to which the Chancellor's concession relates would be liable only at the Island rate (under the Channel Islands concession) it follows that that rate is the measure of the further relief to be derived from the former concession.

From the foregoing it will be clear that the whole treatment of Island investment companies rests on the equitable proposition that neither the company nor

its shareholders should be called on to pay more in income tax than would have been paid had the company not been uprooted from its natural home by the exigencies of war. The same principle plainly underlies the concluding provision of the Revenue's statement of August, 1941, i.e., that so long as such a company is not a member of a group of companies it will not be regarded as chargeable to excess profits tax or national defence contribution.

Taxation Notes

Concessions

Referring to our article in the April, 1943, issue, we have had several letters from readers pointing out differences in the concessions. To these readers we express our sincere thanks for their co-operation and we hope that other readers will follow suit. The Revenue do not make public their practice, and it is, therefore, of considerable value to the profession if we can exchange experiences through these columns. Every concession that comes to our notice is published and many readers have expressed their appreciation of the practical use they have been able to make of the notes. Readers report that under head (21) in the article in question (Trustees working full time in a business in which they have a vested interest in more than 5 per cent. of the income of the trust), the concession is only extended to a manager other than a trustee where the manager has at least a 20 per cent. interest.

In connection with the note in the July issue on Groups of Companies, it is reported that the concession (taking the price of shares to be eliminated in respect of holdings in subsidiary companies as the cost excluding the premium paid for unrecorded goodwill) is so far applied only to the substituted standard. If this is so, pressure should be brought to bear in the endeavour to get it extended. Other experiences on these points will be welcomed.

Appeals

The delay in hearings coming before the Special Commissioners makes it apt to suggest that the time has come to increase the number of Special Commissioners or to permit them to sit singly in more instances. One of our members was notified in June that his appeal is not likely to be heard before May, 1944. In this case, it is impracticable to ask for a hearing in London as it would mean too many witnesses having to travel and lose valuable time. Cases do, however, get " stale " with these long delays and it means that both sides have to " swat " up the facts anew. Important witnesses may have gone elsewhere, and, in any case, memories will have faded. Moreover, opinions may get coloured by after events. Prompt hearings seem a thing of the past, but have lost none of their desirability.

Charges and Allowances

New-comers to income tax often have difficulty in realising that a taxpayer is entitled to allowances only from the income he enjoys himself. Income paid away to others as annual payments cannot rank for allowances; in effect one cannot get tax from the Revenue on income the tax on which one is allowed to recoup from the recipient.

Illustrations:

	(1)	(2)
	£	£
Earned income	500	500
Dividends	300	300
	800	800
Annual payments—loan interest	360	850
	440	Nil

In (1) allowances can be given only on £440 and in (2) no allowances can be given.

In (1) the earned income allowance is 1/10th of £440, not of £500, as £60 of earned income has been needed to make up the excess of the annual payments over unearned income. (It will be seen that the taxpayer is given the benefit of setting off the payments to his advantage, i.e. against unearned income first). The taxpayer, if married with four children, will pay as follows:

		(1)		(2)
Assessment on earned income		£500		£500
Allowances: Earned income	44			
Personal	140			
Children	200	384		Nil
		116		500
Reduced rate, £56 at 6/6 =	£18 4 0			—
60 at 10/- =	30 0 0	500 at 10/- =		250
	£48 4 0			

(1) The £60 paid out of earned income must be kept in charge at the full standard rate to account for the tax deducted, the balance of which is covered by the tax on unearned income (i.e. here, deducted at source from dividend).

(2) This, together with the tax deducted from dividends, covers tax on £800 charges. The balance of £50 is assessable under General Rule 21.

Recent Tax Cases

By W. B. COWCHER, O.B.E., B.Litt., Barrister-at-Law

Sur-tax—Transfer of assets abroad—Transfer by residuary legatee to company in U.K.—Transfer of sinking fund policies and foreign investments to Canadian company—F.A., 1936, Section 18; F.A., 1938, Section 28.

Corbett's Executrices v. *C.I.R.* (C.A., June 9, 1943, T.R. 153), was a case where a scheme of sur-tax avoidance was devised in somewhat special circumstances. It arose out of the fact that the father of the deceased had died in 1882, leaving a large residuary estate to be divided equally amongst his six children. For 50 years the estate was undivided. On July 12, 1933, by a deed of family arrangement it was dealt with and the then trustees of the will released. Part of the residuary estate consisted of investments, sinking fund policies in respect of certain leases and debts. In pursuance of the deed the bulk of these assets was transferred in 1933 to an English company incorporated under the provisions of the deed, the consideration being the issue to the beneficiaries of all the shares of the company in six equal allotments. With a view to getting the premiums upon the sinking fund

policies allowed as a deduction for sur-tax purposes, a Canadian company was formed in 1935, to which the policies were transferred, and to it were also transferred investments abroad sufficient to provide for the said premiums and pay the cost of running the company. The whole of the shares in the Canadian company were issued to the English company. The Special Commissioners had assessed the executrices in respect of the deceased's proportion of the Canadian company's income: and their decision upon appeal had been upheld by Macnaghten, J., and was unanimously affirmed in the Court of Appeal. Scott, L.J., gave the judgment of the Court.

He said that the only argument that had any plausibility was that the lapse of time between the transfer of assets to the English company and the transfer by the latter to the Canadian company was sufficient to prevent the two transfers being regarded as "associated." This, he ruled, was a question of fact, and the Special Commissioners' finding unless unsupported by evidence was conclusive. The other argument was based on the fact that the deceased had only one-sixth of the voting powers of the English company. He said that there were two answers to this. All the shareholders had a common interest and had to pull together in order to escape tax. If this identity of interest and the common-sense inference that they would vote together could be disregarded they would escape by pleading inability to control each other. The other answer was the plain indication of sub-Section (3) (*d*) of F.A., 1936, Section 18, that consent by another person was not necessary. The Section imposed the objective test of actual results. Leave to appeal to the Lords was refused.

The objective test set out in sub-Section (4) seems to the writer to be the most weighty part of the judgment. For the rest, it seems to him to be presuming rather much to assume that a common interest in financial benefits will be decisive of the actions of different individuals; whilst the word "consent" in sub-Section (3) (*d*) suggests acquiescence rather than positive action.

Income Tax Act, 1918, *General Rule* 21—*Termination of service agreement—Percentage of receipts of payer—Whether annual payment or instalments of a capital sum.*

In *Asher* v. *London Film Productions, Limited* (K.B.D., June 9, 1943, T.R. 157), the plaintiff was in the service of the defendant from May 23, 1938, at a large salary plus a percentage of the profits of all pictures made by the company during his services, and plus important rights to "screen credit." The engagement was for 2 years, but the company could extend it for 2 years on conditions. On June 7, 1939, the agreement was cancelled and by the cancellation agreement there was mutual release of all obligations under the service agreement. By a clause of the second agreement the plaintiff was to receive a sum equal to 60 per cent. of all receipts by the company or by its subsidiary company in excess of £110,000 from the said pictures. Payments were to be made monthly. At first, payments were made without deduction of tax but, later, tax was deducted and the action was one to recover the tax. Atkinson, J., held that the payments were annual payments from which tax had properly been deducted.

He said that the first significant feature in the case was that there was no antecedent debt and no capital sum to which the payments could be related. The next significant feature was that the payments under consideration were apparently intended to take the place of payments which were clearly income for tax purposes. The plaintiff was entitled to 60 per cent. of the excess over £110,000. The 40 per cent. must be income, and it was difficult to see that the 60 per cent. was not. Again, the payments were to go on without limit as to time. In his judgment a share of revenue was *prima facie* taxable income unless it was clear that it was an agreed method of discharging a capital obligation. It had been argued that "a sum equal to 60 per cent." showed that the parties intended it to be a capital sum, but he held that the remainder of the clause showed that it was 60 per cent. of the particular source of income.

The judgment was based mainly upon that of the Master of the Rolls in *C.I.R.* v. 36/49 *Holdings, Ltd.*, noted in our May, 1943, issue.

Sur-tax—Undistributed income of company—Apportionment—Ability to secure income or assets—Shareholder with control—Quorum at general meeting—Alteration of Shareholding and cessation of control during year of assessment—Finance Act, 1922, *Section* 21—*Finance Act*, 1937, *Schedule III*, *para.* 1 (*h*)—*Finance Act*, 1939, *Section* 15.

The case of *Fendoch Investment Trust Co.* v. *C.I.R.* (C.A., June 9, 1943, T.R. 151), was noted in our April, 1943, issue. In the Court of Appeal the decision of Macnaghten, J., was unanimously affirmed, Scott, L.J., giving the judgment of the Court. In the case, the controlling shareholder had lost her control upon December 8, 1939, and it had been argued that when, by Section 14 (2) (*d*) of Finance Act, 1937, the year of assessment was, in the case of investment companies, substituted for the company's accounting year which was the test period in the 1922 Act, the effect was that neither a direction nor an apportionment could be made unless the member occupied the position on the last day of the year of assessment. The Court held that Subsection (1) of Section 21 of Finance Act, 1922, Rule 4 (*b*) of the First Schedule, and Rule 8 of the same Schedule to that Act, covered the point, and that further reasons were to be found in Finance Act, 1927, Section 31 (2) and Finance Act, 1939, Section 15 (2) (*c*). Leave to appeal to the Lords was refused.

INDEX AND BINDING

This issue completes Volume LIV of ACCOUNTANCY. In view of the continuing need for economy in paper, the index, which will be ready shortly, will again be sent only to readers who ask for it.

A blue cloth binding case with gilt lettering, in the same style as in former years, has been prepared by the printers, T. Whittingham & Co., Ltd., Pixmore Avenue, Letchworth, Herts, who will bind subscribers' copies at a charge of 10s. 6d., or supply the binding case at 3s. 9d., post free. Orders and copies for binding should be sent direct to them. For readers taking advantage of these arrangements, the title page and index will be included. Others may obtain a copy from the Editor of ACCOUNTANCY at Incorporated Accountants' Hall.

The Association of British Chambers of Commerce

Anglo-American Co-operation

Mr. Eric A. Johnston, President of the Chamber of Commerce of the United States of America, was entertained at luncheon on August 18 by the Association of British Chambers of Commerce. Mr. Henry Morgan, F.S.A.A., President of the Association, occupied the chair, and the company included the Hon. John G. Winant (American Ambassador), the Right Hon. Viscount Halifax, K.G., G.C.S.I., G.C.I.E. (British Ambassador to Washington), the Right Hon. Oliver Lyttelton, D.S.O., M.C., M.P. (Minister of Production), the Right Hon. Lord Riverdale, G.B.E. (Senior Past President of the Association), Mr. Richard A. Witty (President of the Society of Incorporated Accountants), Mr. Harold M. Barton (Vice-President of the Institute of Chartered Accountants), and Mr. R. B. Dunwoody, C.B.E. (Secretary of the Association of British Chambers of Commerce).

A speech of welcome was delivered by The Right Hon. Oliver Lyttelton, D.S.O., M.C., M.P., Minister of Production. He said that the United States and the British Commonwealth were now producing between two and three times the total production of the Axis powers. Combined planning, production and supply had been developed to a higher degree than ever before. In a little over twenty years the United States had become by far the greatest creditor nation in the world, and the expansion of international trade after the war would only be possible if creditor nations were prepared to lend to the undeveloped countries freely. Unity and understanding between the English-speaking races would enable them to achieve both victory and a peaceful and prosperous world.

The Right Hon. Lord Riverdale, G.B.E., proposing the toast of " The United States and Britain," said that unless tariffs and regulations could be relaxed and freer circulation achieved we should have more trouble in the future.

Mr. Eric A. Johnston, President of the Chamber of Commerce of the United States, replying to the toast, described the United States as a nation of ebullient localities and of regions with a sort of patriotism of their own. Banking, the press, and radio, were all localised. There was a consciousness of popular sovereignty, of the power of the people to give, to deny, and to withdraw powers of government. An American would question all centralized dominance in any field; he regarded all powers, political or economic, as subject to daily revision by himself. And national characteristics would not be lost in international affairs. The average American was convinced that out of many races he had built a new race, and was bored by palaver about blood being thicker than water. He himself was among those Americans who wanted intimate friendship and co-operation with Britain, but it must be based not on fiction but on reality. Apart, the two nations could be bitter rivals. Together, with their manufacturers and exports and investments, they could be the world's mightiest force towards lifting all the world's regions toward a higher level, not only of material prosperity but of enlightenment and truly human development.

Americans were overwhelmingly opposed to artificial monopolies and cartels, and similarly they were against political imperialism. This did not mean that they wanted to tell Britain what to do with the British Empire. They knew what Gibraltar and Malta, and British territories in Africa and in Asia, had meant to the forces of liberty in this war. They wanted to start with things as they were, and then see what co-operation was possible.

The nominal American was a natural booster; and this quality was now turning in an international direction with the object of building up the earning power, and thereupon the buying power, of regions of the world where buying power was now scanty. This would not be philanthropy. The undeveloped regions of the world wanted American and British capital, but they wanted to mingle it with capital and representation of their own. This had been stated to him by many business men in the various countries of South America which he had recently visited. The further a country advanced economically, the more it would buy. " Better and better customers all over the world " should be the objective of co-operation between the business of Britain and of the United States. America had more capital, but Britain had more knowledge of the management of capital internationally. Their resources should be pooled, but the capital employed must be private capital, free and competitive, intermingled with whatever capital might arise in the regions of new investments. And there should be rejoicing when all these regions could stand on their own business feet. American localism held the germ of a soundly based world hope. A good world, based on good localities, would reveal the basic truth on which peace must be built—the eternal sameness of human desires and aspirations.

The toast of " The Association of British Chambers of Commerce " was proposed by the American Ambassador, the Hon. John G. Winant.

The President, Mr. Henry Morgan, F.S.A.A., in reply, said that day would occupy a conspicuous place for all time in the annals of the Association. It was of interest to note that the first British Chamber of Commerce was established in New York 175 years ago. The movement was now established throughout both countries, as well as in the British Dominions and colonies. It was fitting, therefore, that that toast should have been proposed by His Excellency, the Ambassador of the United States, at so momentous a period in the history of both nations. They were privileged to have present a distinguished and representative company, including the two Ambassadors, members of the War Cabinet and their highly-placed Ministers of the Crown, members of both Houses of Parliament, heads and leading representatives of Departments of State concerned with trade and industry, leaders of great industrial organisations, labour, banking, and the professions, and prominent industrialists whose names were known throughout the English-speaking world.

FINANCE

The Month in the City

Firm Stock Markets

The Stock Exchange advance continues, but each period of buoyancy has recently been followed by one of caution and perhaps profit-taking. The excellent war news had, of course, been discounted well in advance, but although investors are beginning to regard prices as high enough in some sections of the market, there are others in which " recovery " buying is still conspicuous. The potential replacement demand for textiles, for instance, has stimulated considerable activity in this section, and prices have risen to a point where they bear very little relation to current earnings. British Celanese have been particularly active on the rosy prospects foreseen for rayon and plastics. Radio and electrical shares generally have been popular on similar post-war considerations, but other operators have favoured Far Eastern securities as the group which still offers the greatest scope for recovery. In this they have been encouraged by the Chinese proposals for the protection of capital employed in the development of the country, and by the very encouraging Burmah and Anglo-Iranian dividend declarations. Chinese Government bonds, Eastern Exchange Bank shares and oil shares have all made good advances. Meanwhile the volume of funds for investment will be still further augmented over the next few months by the payment of £30 million to former coal royalty owners. The finance will be provided by the issue of £35 million Coal Commission 3 per cent. Guaranteed Stock, 1950-2016 to the National Debt Commissioners at 97½. This, incidentally, will be the first British Fund with a final redemption date in the next century.

Dividend Limitation

In reply to a Parliamentary question Sir Kingsley Wood has indicated that it is still the wish of the Government that companies should not pay dividends in excess of their pre-war rates. This apparently simple statement conceals a host of ambiquities. When the Dividend Limitation Bill was dropped on the introduction of 100 per cent. E.P.T., the Chancellor of the Exchequer expressed the hope that companies would continue to act in accordance with the Bill's underlying principles. If these principles were at all clear, the matter would not be so difficult. But in fact the Bill provided, among other things, for " exceptional circumstances " in which dividends might be paid at higher than pre-war rates. Are boards of directors expected to use their own discretion as to what constitutes " exceptional circumstances " ? As it is, most boards appear to have regarded the Chancellor's recommendations as too vague to serve as a guide to conduct. There has been no general rise in dividends, but a considerable number of companies are paying more than they did before the war. This does not mean that excess profits are being earned. It merely indicates, for instance, that the companies concerned were abnormally depressed in the standard period, or that an increase in the capital employed in the business has led to an adjustment in the E.P.T. standard. The fact is that any safeguards in addition to Government costing and 100 per cent. E.P.T. are superfluous. A company which raises its dividend must have a good reason for doing so. It is absurd to expect directors to apply additional criteria, and Sir Kingsley Wood would be well advised to drop the nebulous concept of dividend limitation.

Mexican Methods

Although it is generally recognised that Great Britain's shrunken total of overseas investments should be carefully preserved, no official protest has so far been evoked by the putting into operation of the unsatisfactory Mexican debt scheme announced last November. The content of the scheme and the manner of enforcing it have proved to be equally objectionable. At a time when Mexico is enjoying exceptional prosperity owing to the United Nations' demand for raw materials she has effected a permanent reduction in her external debt, which leaves bondholders' capital at a quarter or less of its original amount and cuts their income still more drastically. To put this scheme into operation the assent of only 20 per cent. of the original dollar amount of the debt was required, and since Mexico has recently been purchasing large quantities of her bonds at bargain prices it has been cynically observed that the Mexican authorities might have voted the scheme through on their own account. The scheme has indeed been declared operative without any formal offer having been made to British bondholders. This development appears to have proved equally unexpected to the authorities as to bondholders. When questioned in the House of Commons some months ago the Chancellor of the Exchequer refused to consider approaching the Mexican Government until an offer had been made and considered by the Council of Foreign Bondholders. The latter body expressed its disapproval when the proposals were first published, but had taken no part in the negotiations owing to its recognition of the International Committee of Bankers on Mexico as the most appropriate body for protecting bondholders' interests. In the event the scheme has gone through while British bondholders were still waiting for an offer. It is to be hoped that even at this stage some forceful protest will be made.

New Markings Rule

The Stock Exchange Committee has made a new rule whereby a member may not accept instructions or adopt any procedure which would override his duty to execute each transaction to the best advantage according to his judgment at the time of dealing. The reason for this is to prevent the marking of fictitious prices which might lead the public to believe that shares were worth more than their true market value. Cases have been known where clients have instructed their brokers to purchase shares from jobbers who do not happen to deal in them. The latter have obtained the shares elsewhere in the market, and have sold them to the broker after adding their own turn. In consequence the shares have been marked at an unreal price. The Committee has done well to take action to prevent this form of deception.

Argentine Railway Co-operation

The four leading Argentine railways evidently intend to co-operate more closely in the furtherance of matters which are of common interest to all of them. An interchange of directors has been announced, which involves additional posts for three leading personalities in the Argentine railway world. Although the precise object of this move has not been stated, there can be little doubt that the companies are anxious to present a united front in their dealings with the Argentine authorities, who have recently shown themselves particularly unresponsive to the railways' needs. There has been no improvement in the exchange rate at which financial

remittances are made to London, and more recently the tariff increases claimed by the railways were finally rejected. The proceeds of what increases in rates have been permitted are to go exclusively to the railway workers' fund. The treatment received from the Argentine authorities suggests that it is time that the British Government also interested itself in the matter.

Points from Published Accounts

Richard Thomas

The directors of Richard Thomas are to be congratulated on the excellent use to which they have put the limited space allowed for company accounts under the paper regulations. There are a consolidated balance sheet and a combined profit statement for the group as a whole, and comparative figures are inserted throughout. Even so room is found for a chairman's statement which enters very fully into matters of vital importance not only to Richard Thomas but to the South Wales tinplate industry as a whole. But what marks the latest documents out from the general run of accounts is that trading profits are shown before deduction of tax. Income tax is not differentiated from E.P.T., but it is helpful to have the total charge for the group shown as £1,527,526, which compares with £677,894 left available for distribution. The former amount is provided to "cover liabilities on current year's profits," which presumably means that full provision has been made for future taxation. That being so it is a pity that the whole of the tax reserve of £1,731,404 is included under the heading of "current liabilities and provisions." There is a good case for segregating the reserve against future taxation from the reserve against current tax liabilities and either grouping it with "share capital and reserves" or allotting it a separate heading in the balance sheet.

Guest, Keen & Nettlefolds

The bareness of the information which they give makes the accounts of Guest, Keen & Nettlefold stand out in sharp contrast to those of Richard Thomas. In showing profits after taxation of an undisclosed amount the company is merely following the general practice of the iron and steel group, but there seems no good reason why, with interests in subsidiaries accounting for £10,932,617 of a balance sheet total of £22,570,551, a consolidated statement of assets and liabilities should have been omitted. Reserves for taxation, workmen's compensation and contingencies are shown separately from general creditor balances, but the omnibus figure of £2,388,442 for these reserves is so substantial that it might well have been split up into its component parts. Especially is this so since an allocation of £50,000 made from 1942-43 profit to "war contingencies account, including deferred repairs" brings the total addition to that fund in the past four years up to £260,000. This is a reserve which bears no very close affinity to taxation provisions. There is no real relationship, either, between tax reserve certificates and interests in associated companies, yet both are included in an investments item of £5,230,651. In 1941 £500,000 was applied from general reserve to writing down this item, and the directors now reveal that, owing to the recovery in the values of quoted securities, £350,000 of this has been transferred to the reserves deducted from shares in subsidiaries. But this transaction is not recorded on the face of the balance sheet; and, indeed, apart from the fact that the shares in subsidiaries and the investments, including interests in associated companies, are both described as taken "at or under cost" there is nothing to suggest that substantial investment reserves do exist. It may, therefore, be worth recalling that the transfer made to investments reserve from general reserve in 1941 followed similar transfers of £225,000 in 1939 and £982,245 (applied in reduction of the book values of shares in Welsh Associated Collieries) in 1935. To describe the two investment entries as being stated after deduction of reserves would be useful in bringing this to mind at a time of general appreciation in investment values.

Seager Evans and E.P.T. Treatment

The Seager Evans accounts deserve mention for their clear and intelligent treatment of E.P.T. Final determination of the company's E.P.T. standard has shown that the reserves for taxation made since the outbreak of war exceeded the agreed liabilities by £52,339. This sum has been transferred to profit and loss, but it is shown as a separate credit and not applied in reduction of the tax provision made for 1942-43. Had the alternative method been followed the increase in the tax provision would have been sharp enough; as it is there is a fourfold advance, from £39,217 to £165,520. This contrast underlines the chairman's statement that the profits of £245,216 (against £80,001) shown before deducting tax are exceptional and partly brought about by inflated war-time values; it has always been the practice of this firm of distillers to carry duty-paid stocks, with the result that with the increase of duties from time to time a fortuitous profit is earned. A consolidated balance sheet indicates that the loan indebtedness of the group has again been substantially reduced. One puzzling point is that, while the chairman says in his survey that all earnings by subsidiary companies have been brought in, the statutory statement intimates that the dividends declared by these companies are less than the profits earned by them.

Tootal Broadhurst Lee Employees' Bonus

The trading profit of Tootal Broadhurst Lee is determined not only after meeting usual charges and E.P.T. and depreciation but also after deducting employees' bonus. The employees are entitled to a bonus (calculated on earnings up to £500) equal to (a) twice the rate paid on the ordinary shares in excess of 7½ per cent. but under 15 per cent. or (b) the same rate as that paid on such shares in excess of 15 per cent., in which case the total amount paid in bonuses must not be greater than the amount absorbed in paying excess dividends. The amount of the bonus disbursement is not indicated in the profit and loss account, but the report says that "on the dividend and bonus recommended [12½ per cent. as usual] the employees will receive under the bonus scheme a sum of £40,000, for which provision has been made." Since this payment is conditional upon the rate of ordinary dividend it would surely be more appropriate to show it deducted at the same time as the payment to ordinary shareholders. At present the first impression created by the accounts is that £114,013 is left available for preference holders and £104,013 for the ordinary shareholders. The true position, apparently, is that £154,013 is available for preference dividend and £144,013 for distribution to ordinary shareholders and employees on the lines already mentioned. The difference is appreciable.

LAW

Legal Notes

EXECUTORSHIP LAW AND TRUSTS

Wills—Construction.

It is ultimately a question of construction whether a testator has sufficiently described a particular subject-matter in the terms of his will. The courts have approached the question in a benevolent spirit in an attempt to give effect to the wishes of testators. The tendency is to disregard mistakes of description, for instance, when the identity of the property is clear and the testator's mistake only relates to the nature of his interest in it. But that there must be limits to that liberality of construction was illustrated in *Re Mulder* (1943, 2 All E.R., 150). The testator had carried on business in partnership with his stepson; they had equal shares in the capital and profits of the partnership. But when he made his will, the testator was under the mistaken belief that the whole business was his and that his stepson merely occupied the position of salaried manager. He purported to deal in his will with the whole business, both capital and undrawn profits. On that assumption he bequeathed the business to his trustees and empowered them to carry it on and generally to act as if they were beneficially entitled to it. The will gave the stepson an option to purchase the business at a sum certified by an accountant to be half the aggregate value of the whole business. If the option was exercised, the purchase money was to be divided between residue and the testator's son. If the option was not exercised, the business was to be sold and its proceeds divided in the same manner. The stepson declined to exercise the option. The question for decision was whether the language of the testator, which in its natural meaning applied only to the whole business, could be applied to the half share possessed by the testator. Uthwatt, J. had decided that it could not. The Court of Appeal (Luxmoore, L.J. dissenting) affirmed that view, holding that the interpretation of the expression " the business " as meaning the testator's share in the business would destroy the testator's clear intention to confer a benefit on his stepson. The expression must mean the whole business and both the original bequest of the business to the trustees and the beneficial dispositions were inoperative.

Executors—Exclusion of offensive matter from a will.

A testator has the undoubted right to give reasonable explanations of the dispositions in his will, even though when little or nothing is given to an expectant beneficiary such explanations may be painful. But the Court may exclude from probate words of atrocious or libellous character. This power is rarely exercised unless the words are clearly defamatory of the applicant. It was discussed by Bucknill, J. in *The Estate of Hall, deceased* (1943, 2 All E.R. 159). The words complained of did not affect the disposition of the testator's property, but explained why she had made a codicil and revoked certain provisions of her will. Bucknill, J. held that the words complained of were not defamatory. There were, however, four words, " for the family honour," which might suggest dishonourable conduct. He therefore gave permission to exclude those words from the probate. Leave to appeal was granted.

Will—Statutory trust for sale—Order directing trustees to sell.

Section 30 of the Law of Property Act, 1925, provides that when property is held on trust for sale and the trustees for sale refuse to sell, any person interested may apply for an order directing trustees to give effect to the proposed transaction; the court may then make such order as it thinks fit. In *Re Mayo* (1943, W.N. 166), by his will dated 1932, a testator appointed his son and other persons executors and trustees thereof and trustees for the purposes of the Settled Land Acts. He devised to the trustees freehold property on trust to pay the rents and profits arising therefrom to his wife for her life, and from and after her decease to hold the property on trust for his son and daughter in undivided shares. The testator died in 1936, and the widow died in 1939. The son requested his co-trustees to exercise the statutory powers of sale on which the property was held. On their refusal he took out a summons for an order under section 30 of the Law of Property Act, 1925, directing his co-trustees to concur with him in offering the property for sale by auction on such terms as the court might direct. Simonds, J. said that under section 36 of the Settled Land Act, 1925, the property was held on trust for sale, but there was super-added to that trust a statutory power of postponement. The judicial discretion must be exercised in the same way as that exercisable by the court in the case of an instrument containing as express trust for sale. The trust for sale would therefore prevail unless all three trustees agreed in exercising the power to postpone. He therefore directed the respondent trustees to concur with the testator's son in taking steps for the sale of the property.

MISCELLANEOUS

Arbitrators—Discretion as to costs.

The award of costs is wholly in the discretion of a judge trying a case, and the same rule applies to an arbitrator. Therefore the court is reluctant to interfere with an arbitrator's discretion, especially when he is an official arbitrator dealing with matters well within his experience. Even though the court cannot say why the arbitrator has not awarded full costs to a successful party, the award of an arbitrator will not be interfered with. In *Rosen and Company, Ltd.* v. *Dowley and Selby* (1943, 2 All E.R. 172), the claimant had been awarded compensation under the Civil Defence Act, 1939, for disturbance upon part of the premises let to him; they were utilised for an air-raid shelter. The claimant had named no sum which he would be willing to accept, nor did the respondent make an offer. The arbitrator gave the claimant £78 towards his costs. It was contended that he should have been awarded his full costs and that this was a wrong exercise of the arbitrator's discretion. Atkinson, J. refused to interfere. The arbitrator may have formed the view that more evidence was called than was necessary or that more than the reasonable costs been incurred.

Liabilities (War-Time Adjustment) Act, 1941.—How far applicable to private companies.

The object of the Liabilities (War-Time Adjustment) Act, 1941, is not merely a postponement of liquidation, but to provide a means of settlement of the debtor's affairs. It is primarily intended for individual debtors and is only incidentally applied to private companies. When it is applied to such companies, the court must have regard to the means of members and officers of the company, including the position of those who depend on the continuance of the company for their livelihood. But there may be members with considerable private fortunes who ought to aid the company when in difficulties rather than saddle creditors with the company's misfortunes. Whilst the whole resources of an individual can be made available for the satisfaction of creditors' debts, the members of a company

are not liable for the company's debt except to the extent to which they can be made contributories. In *Re Royal Albion Hotel, Limited* (1943, 2 All E.R. 192), a private limited company, anticipating trading at a loss, had ceased to carry on business in July, 1940. Owing to arrears of interest on mortgages, etc., the company was insolvent and had no assets which were not charged to creditors. In March, 1942, a county court granted the company a protection order under the 1941 Act and pursuant thereto the liabilities adjustment officer was instructed to investigate and report on the company's affairs. The report merely stated the company's position and made recommendations. The county court judge thereupon found that the business had been seriously affected by the war and that it was impossible to make a final order at that time. He made an interim order appointing a receiver for a limited period and postponing a settlement of the company's liabilities. Some secured creditors of the company appealed to set aside the order, or, alternatively, to have the application for a liabilities adjustment order reheard. In July, 1942, the hotel had been requisitioned and its furniture stored. Compensation had recently been fixed at £1,500 a year. Liabilities exceeded assets by £8,000. Uthwatt, J. said that before any interim order was made the Act required the conditions which would justify the making of a single adjustment order. The court must be satisfied, not only that the debtor's troubles were due to the war, but also that it was practicable and proper to deal with the case under the Act. As the debtor was a company, the court must further be satisfied that the object of the application was to enable the company to recover its business, implying reasonable expectation that recovery was possible. The company's constitution and affairs and the means of its members and officers must be taken into account. Such examination had not been carried out. The question of practicability could not be determined without envisaging some general scheme, complying with the Act, which would settle the debtor's affairs. In those circumstances the order of the county court judge could not stand. Upon the facts it was doubtful whether anyone could conclude that it was practicable or proper to deal with the case under the Act. The company was insolvent in both senses of the word and all its assets were heavily charged. Under the Act the amount of the charge for capital on the company's assets could not be reduced, though the interest payable could be reduced so long as secured creditors were not permitted to realise their security. For the company ever to resume business it would be necessary to postpone the realisation of the business and property, to postpone payment of debts and to raise further capital. Such postponement could not be legitimately ordered. An order for postponement would here be for the benefit only of the company. The order must be discharged. When an application for an order under the Act was made by a private company, it should be remembered that the winding-up of a company unable to pay its debts did not subject shareholders or directors to any disabilities like those attaching on the bankruptcy of an individual, and due weight should be given to that consideration in determining the propriety of making an order in favour of a company. The Act treated companies on a different footing from individuals and its application did not extend to public companies.

The Emergency Acts and Orders

In our November, 1939, issue we published the first instalment of a comprehensive guide to the wartime enactments and Orders which most concern the accountant. The forty-third instalment is given below. The summaries are not intended to be exhaustive, but only to give the main content of an Act or Order, the full text of which should be consulted if details are required.

ACTS

Finance Act, 1943.

(See ACCOUNTANCY, June, 1943, page 169; July, page 187; and August, page 204).

Law Reform (Frustrated Contracts) Act, 1943

Sums paid under a contract which is frustrated are recoverable, subject to allowance for expenses.

(See ACCOUNTANCY, August, 1943, page 205.)

ORDERS

FINANCE

No. 867. *Regulation of Payments (French North and West Africa) Order*, 1943.

French North Africa, French West Africa and Togoland under French Mandate are brought within the scope of the Regulation of Payments (Consolidation) Order, 1943. The prescribed manners of payments for exports are payment in Algerian francs, French Moroccan francs or French West African francs, and payment in sterling obtained from an account of a person resident in one of the territories.

(See ACCOUNTANCY, July, 1943, page 200.)

INDUSTRIAL RECORDS

No. 870. *Undertakings (Records and Information and Inspection of Premises) Order*, 1943.

A person carrying on an undertaking must keep such records as the Minister of Labour and National Service may direct; and may be required to produce records and information and to permit any person designated for the purpose to inspect the premises. The Undertakings (Inspection) Order, 1940, is revoked, but other provisions relating to records, information and inspection are unaffected.

(See ACCOUNTANCY, March, 1943, page 115.)

MANUFACTURE AND SUPPLY

No. 863. *Toilet Preparations (No. 2) Order*, 1943.

The Toilet Preparations Order, 1942, is extended to August 31, 1943, with consequential increases in quotas to allow the present rate of supply to be maintained for the two additional months.

No. 908. *Sports Gear (Control of Manufacture and Supply) (No. 2) Order*, 1943.

Sports gear may not be manufactured or supplied except under licence. The Board of Trade is to keep a Register of Licensed Manufacturers of Priority Sports Equipment. Unregistered persons may acquire equipment for "priority sports" only on production of a buying certificate on Form P.S.1, endorsed by a Government Department or an approved association. A composite business may, with the consent of the Board, be registered in respect of its manufacturing department only, provided that separate accounts and records are kept. The previous Order (1942, No. 1460) is revoked and superseded.

No. 966. *Miscellaneous Goods (Prohibition of Manufacture and Supply) (No. 4) Order*, 1943.

Toys containing more than 10 per cent. of metal may not be supplied by traders after September 30. The manufacture, and supply by manufacturers, of children's toy apparel (other than dolls' clothes) is subject to

licence. Definitions are given of the terms " toys " and " standard wedding ring," and a revised definition of controlled goods of Class I (goldsmiths' and silversmiths' wares).

No. 967. *Containers and Straps Order*, 1943.

The control of containers and straps is continued for the six months ending January 31, 1944, with some modifications.

(See ACCOUNTANCY, July, 1943, page 200.)

PRICES OF GOODS AND SERVICES

No. 724. *Maximum Prices Orders* (*Toilet Preparations and Travel and Fancy Goods*) (*Amendment*) *Order*, 1943.

The Orders controlling the prices of toilet preparations and of travel and fancy goods are amended to allow for the increase in purchase tax.

No. 906. *Domestic Pottery* (*Maximum Prices*) *Order*, 1943.

Amendments are made in the permitted wholesale margin in relation to teapots, and increased margins are allowed for pottery delivered to retailers in Northern Ireland.

No. 753. *Utility Cloth* (*Maximum Prices*) *Order*, 1943.

No. 880. *Utility Household Textiles* (*Maximum Prices*) *Order*, 1943.

No. 881. *Utility Bedding* (*Maximum Prices*) *Order*, 1943.

Previous Orders are revoked and their provisions consolidated, with some modifications. A manufacturer who buys a finished article from another manufacturer is for most purposes to be treated as a wholesaler. Maximum prices must be reduced by 2½ per cent. when payment is made before the 10th of the following month. Retail maximum prices do not include purchase tax, except (until October 31, 1943) for goods on which tax has been paid.

No. 859. *Utility Apparel* (*Maximum Prices and Charges*) (*No.* 2) *Order*, 1943.

No. 851. *General Apparel and Cloth* (*Maximum Prices and Charges*) (*No.* 3) *Order*, 1943.

The additional margin allowed to composite businesses where at least ten of their retail branches are supplied from one warehouse of the wholesale branch will be allowed if the condition would have been satisfied but for the closing of one or more retail branches as the result of war damage. The rounding of prices must not have the result of exceeding the ceiling price. Under the General Apparel Order a Related Price List No. 38 has been issued, containing maximum prices for standardised narrow fabrics. List No. 5 is replaced by a new List No. 5A.

(See ACCOUNTANCY, July, 1943, page 200.)

TRADING WITH THE ENEMY

Nos. 736, 862, 969. *Trading with the Enemy* (*Specified Persons*) (*Amendment*) *Orders*, 1943, *Nos.* 8, 9, 10.

The list of persons deemed to be enemies, consolidated in No. 692, is amended.

No. 821. *Trading with the Enemy* (*Specified Areas*) *Revocation* (*No.* 2) *Order*, 1943.

French North and West Africa and certain other French territories are no longer enemy territory for the purposes of the Trading with the Enemy Act.

(See ACCOUNTANCY, July, 1943, page 200.)

WAR RISKS INSURANCE

No. 1158. *War Risks* (*Commodity Insurance*) (*No.* 3) *Order*, 1943.

The premium for commodity insurance policies for the three months ending December 2, 1943, remains unchanged at 2s. 6d. per cent. per month.

(See ACCOUNTANCY, July, 1943, page 200.)

Society of Incorporated Accountants

INCORPORATED ACCOUNTANTS' BENEVOLENT FUND

The trustees of the Incorporated Accountants' Benevolent Fund have received with regret the resignation on grounds of health of Mr. Henry J. Burgess, who had been a trustee for over twenty years and since 1931 had held the office of chairman. Mr. Percy Toothill has been elected chairman of the trustees.

DISTRICT SOCIETIES

LONDON

The annual general meeting of the London District Society will be held at Incorporated Accountants' Hall on Thursday, September 23, 1943, at 2.30 p.m. The chairman, Mr. W. Norman Bubb, will preside.

To economise in paper and postage it has been decided not to send an individual notice of the meeting to each member. Members are asked to take this announcement as notice of the meeting.

The accounts for the year ended March 31, 1943, are available for inspection at Incorporated Accountants' Hall by any member of the District Society.

NOTTINGHAM, DERBY AND LINCOLN

Annual Report

The total membership is now 260, comprising 177 members and 83 students, compared with 248 (178 members and 70 students) in 1942. Forty-seven members and students are serving with H.M. Forces.

The Committee regrets to record the death of Mr. S. H. Pugh, A.S.A.A., and the death on active service of Squadron Leader P. F. Hickling, D.F.M.

Two lectures were given, one on excess profits tax by Mr. H. A. R. J. Wilson, F.C.A., F.S.A.A., and one on the Beveridge Report by Mr. A. Radford, B.Sc. (Econ.).

Two students passed the Intermediate Examination during the year.

YORKSHIRE

At a committee meeting on August 16, the following officers were elected for 1943-44 :—President, Mr. George A. Windsor ; Vice-President, Mr. A. J. Naylor ; Honorary Treasurer, Mr. Thomas Hayes ; Honorary Secretary and Librarian, Mr. T. W. Dresser.

PERSONAL NOTES

Mr. Henry G. Field, Incorporated Accountant, has commenced public practice at Culliford House, Ormond Drive, Hampton, Middlesex.

Messrs. Brooke & Stocks, 37, Manor Row, Bradford, have opened a branch office at Central Buildings, Sowerby Bridge, Yorks.

Messrs. Fredk. C. Crosland & Co., Incorporated Accountants, 10, Park Row, Leeds, announce that Mr. Norman N. Kay, Incorporated Accountant, has been taken into partnership. The name of the firm will be unchanged.

As from September 1, the accountancy practice hitherto conducted by Messrs. Bell & Watson, Doncaster, has been acquired by a new firm, Messrs. Watson, Waddington & Sharp. The partners will be Mr. G. E. Watson, Mr. L. G. F. Waddington, Incorporated Accountant, and Mr. R. N. Sharp, Incorporated Accountant. The practice will be carried on from 24, High Street, Doncaster.

ACCOUNTANCY

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The Society of Incorporated Accountants and Auditors

President: RICHARD A. WITTY, F.S.A.A., London.
Vice-President: FRED WOOLLEY, J.P., F.S.A.A., Southampton.

Secretary: A. A. GARRETT, M.B.E., M.A.
Deputy Secretary: LEO T. LITTLE, B.Sc.
Solicitors: NORTON, ROSE, GREENWELL & Co.
Bankers: BANK OF ENGLAND.

Offices and Library: INCORPORATED ACCOUNTANTS' HALL, VICTORIA EMBANKMENT, LONDON, W.C.2.

Members use the designation Incorporated Accountant. Fellows may also use the initial letters F.S.A.A., and Associates A.S.A.A.

Admission to membership is by examination subject to satisfactory completion of articles of clerkship for five years (University graduates three years). Nine years' approved professional experience may be accepted in lieu of five years' articles. Exemption from the Preliminary Examination is granted on production of certain educational certificates. All candidates must pass the Intermediate and Final Examinations.

There are Branches of the Society in Scotland, Ireland, Canada, Australia, and South Africa, and District Societies in all parts of England and Wales, Northern Ireland, and India. Students' Societies and Students' Sections operate throughout Great Britain and Ireland.

Members of the Society are not allowed to seek professional business by advertisements or circulars.

Rooms at Incorporated Accountants' Hall are available for meetings and arbitrations.

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